No. 07-1508

SUPREME COURT U.S.
FILED
OCT 31 2008
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SUE WALSTON,

Petitioner

v.

LARRY WALSTON, WILLIAM V. DUNNAM, JR., C. VANCE DUNNAM, JAMES R. DUNNAM, J. ROBERT ANGEL, DUNNAM & DUNNAM, LLP AND CENTRAL TRANSPORTATION SYSTEMS

Respondents

On Petition for Writ of Certiorari To
The Court of Appeals For The Tenth District of Texas
At Waco, Texas

PETITION FOR REHEARING

SUE WALSTON
Petitioner
3231 Ferndale Drive
Waco, Texas 76706
Telephone: (254)662-2270

HOWARD HUGE®

"Remember, Howard, we have to avoid even the appearance of wrongdoing."

From "LaughParade" by Bunny Hoest and John Reiner
Parade Magazine
August 21, 2005

PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner Sue Walston respectfully moves the Court for an order (1) vacating its denial of the petition for writ of certiorari entered on October 6, 2008, and (2) granting the petition in the interest of justice and for the following reason:

THE HOLDOVER OF PENDING CASE
CAPERTON, ET AL V. MASSEY, ET AL

Petitions for rehearing of an order denying certiorari are generally granted in two instances. One of those instances is if a petitioner can demonstrate "intervening circumstances of a substantial or controlling effect." Rule 44.2.

The petition for writ of certiorari in the instant case, filed on May 29, 2008, was distributed for the September 29th conference and denied on October 6th. A petition for writ of certiorari in *Caperton v. Massey, et al*, 08-22, filed on July 2, 2008, was distributed for the October 10th conference, but still has not been ruled upon as of the date of this filing.

Mr. Caperton complains in his petition that his Fourteenth Amendment right to due process was violated when a West Virginia judge who had accepted a substantial campaign contribution from the opposing party refused to recuse himself. The petition invites the Court to provide guidance as to how large a judicial campaign contribution may be accepted before the appearance of bias becomes constitutionally intolerable. The *Caperton* case has elicited *amicus curiae* support and has received substantial national press attention, including

supporting articles in the *New York Times* and the *Wall Street Journal*. The passage of time with no ruling lends the appearance that, at the very least, the Court is giving thoughtful consideration to granting the petition.

Ms. Walston also complained in her petition that her right to due process was violated when Texas judges who had accepted campaign contributions from parties or attorneys with an interest in her case refused to recuse themselves. She urges the Court to review the issue under the broader scope of whether due process can be protected at all so long as *any* money is changing hands.

In *Walston*, many of the same considerations are involved as will be before the Court in *Caperton*, should that petition be granted. In fact, a determination of whether *any* exchange of money is too much to be constitutionally tolerable would logically seem necessary before the Court becomes embroiled in state election laws and state rules of court by attempting to impose a limit on the amount of judicial campaign contributions a judge may accept before he must recuse himself. Limitation of the Court's review to the how-much-is-too-much approach would leave any case open to judge-picking where a litigant who desires to avoid having a particular judge hear a case has only to make a contribution to his campaign or officeholder account which exceeds the limit mandated by the U.S. Supreme Court in *Caperton*.

The close identity of issues in this case and the *Caperton* case amply justifies a reconsideration of the denial of certiorari here. In fact, should certiorari be

granted in *Caperton*, it would be most appropriate for the Court to hear and consider the instant case at the same time, thereby taking the opportunity to address and resolve the greater constitutional issue of whether our judicial system can fulfill its purpose when public confidence in the courts is eroded by perceptions of corruption and undue influence where judicial campaign contributions are involved.

The Court has previously reconsidered cases where the same or a related issue has come before the Court in other cases still pending. See *Pickett v. Union Terminal Co.*, 313 U.S. 591, 314 U.S. 704 (1941), 315 U.S. 386, 394 (1942); *Forgett v. United States*, 383 U.S. 926 (1966), 390 U.S. 203 (1968); *Simmons v. Sea-Land Services, Inc.*, 459 U.S. 931 (1982), 462 U.S. 1114 (1983). In *Florida v. Rodriquez*, 461 U.S. 940 (1983), the state cited as an "intervening circumstance" in its petition for rehearing the filing by the state of a petition for writ of certiorari in a related case. The petition for rehearing remained on the Court's docket for the next two years and ultimately was granted in view of the Court's decision in favor of the State of Florida in the related case.

For these reasons, and in the interest of justice, the denial of certiorari should be reconsidered.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, Petitioner prays that the Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

SUE WALSTON
Petitioner
3231 Ferndale Drive
Waco, Texas 76706
Telephone: (254) 662-2270

October 31, 2008

CERTIFICATE OF COMPLIANCE

Petitioner hereby certifies that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

_____

Sue Walston